

Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (citations omitted); *see also Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1992) ("revisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original . . . motion was briefed' is likewise inappropriate") (citation omitted); *Davis v. Mid-Century Insurance Co.*, 1998 WL 1285714, *7 (W.D. Okla. 1998) ("A motion to reconsider is appropriate only in very limited circumstances. Such a motion is not designed to be a second chance for a losing party to again argue his case in the hope of obtaining a favorable decision. A motion to reconsider 'would be appropriate where, for example, the court has patently misunderstood a party or has made a decision outside the adversarial issues presented to the court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the court'" (citation omitted).

II. The Poultry Growers' Reconsideration Motion Fails to Satisfy Any of the Grounds That Might Justify Reconsideration

The Poultry Growers' Reconsideration Motion requests that the Court reconsider two specific issues addressed in its May 31, 2006 Order (DKT #757). First, the Poultry Growers ask the Court to reconsider its holding that the discovery sought by the State is relevant. Second, the Poultry Growers ask the Court to reconsider its holding that the sampling permitted in the May 31, 2006 Order does not constitute a taking by the State. For the reasons set forth below, neither of these issues warrants reconsideration by the Court, and the Poultry Growers' Reconsideration Motion should be denied.

A. The Court's Ruling that the Discovery Sought by the State is Relevant Does Not Warrant Reconsideration

In its May 31, 2006 Order, the Court ruled:

The Court has considered the arguments of counsel at oral argument and reviewed Plaintiff's Complaint. The Court concludes that Plaintiff has adequately demonstrated relevance. Plaintiff alleges that various entities and individuals engage in poultry growing operations on the various properties upon which subpoenas have been issued. Plaintiff alleges that such poultry growing operations generate poultry waste, and that the poultry waste is handled, stored, and disposed on lands within the Illinois River Watershed ("IRW"). Plaintiff alleges that the IRW has been polluted and that improper poultry waste disposal practices are responsible for the pollution. Plaintiff notes that poultry waste includes numerous elements including phosphorus, nitrogen, arsenic, zinc, copper, hormones, and microbial pathogens. Plaintiff also notes that elevated levels of these substances exist in the waters of the IRW. Plaintiff has adequately satisfied the relevancy requirement of Plaintiff's requests.

May 31, 2006 Order, p. 4. It is unclear from the Poultry Growers' Reconsideration Motion exactly what grounds they believe warrant reconsideration of this ruling. No changes in the law or the facts have occurred since the May 31, 2006 ruling. Further, the Poultry Growers do not point to any clear legal error or "manifest injustice" that would provide a basis for reconsideration of the May 31, 2006 Order. Finally, the Poultry Growers do not allege any misunderstanding by the Court of the law, the facts, or the parties' positions. The Poultry Grower's Motion to Reconsider merely reiterates their previously-argued (and unfounded) position that the discovery sought by the State is not relevant, repeats the information set forth in the Bert Smith Affidavit, and then references a recent report from the Oklahoma Conservation Commission.¹ *Voelkel v. General Motors Corp.*, 846 F.Supp. 1482, 1483 (D. Kan. 1994) ("A motion for reconsideration is not a second chance for the losing party to make its strongest case or to dress up arguments that previously failed"); *All West Pet Supply Co. v. Hill's Pet Products*

¹ This report does not constitute new evidence, and does not change any of the circumstances of this case. See *Davis*, 1998 WL 1285714, *7 (denying motion to reconsider that reiterated previous arguments and merely added new case citations).

Division, 847 F.Supp. 858, 860 (D. Kan. 1994) ("A motion to reconsider . . . may not be used as a vehicle for the losing party to rehash arguments previously considered and rejected by the district court"); *Davis*, 1998 WL 1285714, *7 ("[A motion to reconsider] is not designed to be a second chance for a losing party to again argue his case in the hope of obtaining a favorable decision").

The simple fact of the matter is that the Court's finding of relevancy is correct, and the Poultry Growers have cited no legal authority to the contrary. Relevancy is judged by the allegations made in the complaint. *See* Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"). Issues pertaining to relevancy were argued extensively at the May 17, 2006 hearing. A review of the May 31, 2006 Order reflects that the Court, in finding relevancy, correctly analyzed the sought-after discovery in the context of the claims asserted by the State in the Complaint. Accordingly, the Poultry Growers' Reconsideration Motion should be denied.

B. The Court's Ruling that the Sampling Sought by the State Does Not Constitute a Taking Does Not Warrant Reconsideration

In its May 31, 2006 Order, the Court ruled:

The Court has reviewed the cases relied upon by the Poultry Growers and some Defendants and they are factually distinguishable. . . . The Court concludes that the proposed sampling does not constitute a taking by the State.

May 31, 2006 Order, p. 10 (citations omitted). As with the relevancy issue, here, too, the Poultry Growers cite no change in the law or the facts since the May 31, 2006 ruling. Nor do the Poultry Growers point to any clear legal error or "manifest injustice" that would provide a basis for reconsideration of the May 31, 2006 Order as to this issue. And the Poultry Growers do not allege any misunderstanding by the Court of the law, the facts, or the parties' positions.

Rather, the Poultry Growers' Reconsideration Motion suggests, without citation to any legal authority or facts, that because the sampling will be split in the laboratory rather than in the field larger or additional samples must be taken, and that these larger or additional samples somehow would rise to the level of a taking. It is unnecessary to address the merits (or, more appropriately, the lack of merit) of the Poultry Growers' legal argument because it is based upon an entirely erroneous underlying factual premise. First, the size of the samples being taken does not change merely because the samples will be split at the laboratory rather than in the field.² And second, the samples are being split only two ways (*i.e.*, one for each side), not multiple ways (*i.e.*, one for the State and one for each Poultry Integrator Defendants) as the Poultry Growers suggest might occur. The Poultry Growers' Reconsideration Motion thus fails on this basis as well, and must be denied. *See Voelkel*, 846 F.Supp. at 1483; *All West Pet Supply Co.*, 847 F.Supp. at 860; *Davis*, 1998 WL 1285714, *7.

III. Conclusion

Because it falls outside the limited class of circumstances in which a motion to reconsider is appropriate, the State respectfully requests that the Court deny the Poultry Growers' Reconsideration Motion.

² In its June 9, 2006 Supplemental Order (DKT #796), the Court reaffirmed its ruling that the State is permitted to split the samples in the laboratories.

Respectfully submitted,

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